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CHARLES ELMORE CROPLEY
CLERK

No. 1195

In the Supreme Court of the United States

OCTOBER TERM, 1945

WEST KENTUCKY COAL COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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OPINIONS BELOW

The opinion of the court below (R. 324–331) is reported in 152 F. (2d) 198. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 66–75) are reported in 57 N. L. R. B. 89. The decision of the Board in a prior representation proceeding which forms part of the record in this case (R. 168-175) is reported in 54 N. L. R. B. 358.

JURISDICTION

The decree of the court below (R. 323) was entered on December 6, 1945. The petition for

rehearing (R. 333–341) was denied on February 11, 1946 (R. 343). The petition for a writ of certiorari was filed on May 3, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether, after objection by the petitioner, the National Labor Relations Board could properly conduct a hearing, under Section 9 of the National Labor Relations Act, without making the Secretary of the Interior a party to its proceedings, when the employees involved worked in certain of petitioner's mines which, at the time of the hearing, were temporarily in the possession of the Secretary of the Interior pursuant to his seizure thereof under the provisions of the War Labor Disputes Act.

2. Whether petitioner was entitled to a second opportunity, in a subsequent unfair labor practice proceeding before the Board, to adduce evidence available to it at the time of the prior representation hearing which it refused then to adduce because of its contention based upon the seizure of the mines and which it failed to ask the Board to receive by reopening the record when the mines were restored to its possession two weeks after the hearing.

3. Whether the Board acted arbitrarily in determining that the employees in three of petitioner's mines which were located in the same vicinity and were geographically separated from petitioner's other mines constituted an appropriate bargaining unit.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151, *et seq.*) are set forth in Appendix A, *infra,* pp. 22–26. The pertinent provisions of the War Labor Disputes Act (Act of June 25, 1943, c. 144, 57 Stat. 163, 50 U. S. C. App. (Supp. IV) 1501, *et seq.*) are set forth in Appendix B, *infra,* pp. 27–30. The pertinent provisions of the Regulations and Order 1888 of the Secretary of the Interior (8 F. R. 6655, 10712, 11344, and 8 F. R. 15199) are set forth in Appendix C, *infra,* pp. 31–37. The pertinent provisions of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended (8 F. R. 16047, 9 F. R. 7745) are set forth in Appendix D, *infra,* pp. 38–39.

STATEMENT

The United Mine Workers of America, District No. 23 (hereinafter referred to as the Union), having filed petitions, under Section 9 of the Act, for investigation and certification as the bargaining representative of the employees of

several of petitioner's mines, the Board commenced an investigation and as part thereof held a hearing on November 5, 1943 (R. 79). Petitioner appeared specially at the hearing and asserted that possession of its mines had been taken by the United States,[1] that it was not authorized to take part in the proceedings, and that the Board was without authority to proceed therewith (R. 80, 83–97). Petitioner accordingly moved that the Union's petitions be dismissed or, in the alternative, that the hearing be continued until the Government relinquished its custody and control of petitioner's mining properties (R. 10–40). The trial examiner suggested that petitioner proceed with the presentation of its case, without prejudice to its contention based on the seizure of its mines (R. 103). Petitioner declined to do so (*ibid.*). Thereupon the trial examiner denied the motion for continuance, and reserved for the Board decision on petitioner's motion to dismiss (R. 102). Petitioner then withdrew from further participation in the hearing (R. 104). Petitioner's mines were restored to its possession on November 17, 1943.[2]

[1] Pursuant to Executive Order No. 9393, dated November 1, 1943 (R. 91–93; 8 F. R. 14877), the Secretary of the Interior, by Order 1888, dated November 1, 1943 (8 F. R. 15199), took possession of the nation's bituminous coal mines, including petitioner's, and designated the president of each coal mining company the operating manager for the United States.

[2] Petitioner so stated in its brief in the court below and the court commented on the fact in its opinion (R. 328).

The Board, on January 6, 1944, issued its decision and direction of election (R. 168–175), in which it denied petitioner's motion to dismiss, affirmed the trial examiner's ruling denying petitioner's motion for a continuance (R. 169), and determined that petitioner's production and maintenance employees working in North Diamond Mine No. 2, North Diamond Mine No. 3, and Hecla Mine, with certain exclusions, constituted a unit appropriate for the purposes of collective bargaining with the petitioner, within the meaning of Section 9 (b) of the Act (R. 173).[3] The facts respecting the appropriate unit, as found by the Board and shown by the evidence, may be summarized as follows:[4]

North Diamond Mine No. 2, North Diamond Mine No. 3 and Hecla Mine are all located in the immediate vicinity of Earlington, Kentucky, and are approximately 45 miles away from petitioner's other mines in the general neighborhood of Sturgis, Kentucky (R. 172–173; 110–112). The employees in petitioner's Sturgis mines, with the exception of Mine No. 2, have shown comparatively little desire for collective bargaining (R.

[3] In its decision, the Board also determined that petitioner's production and maintenance employees at Mine No. 2, near Sturgis, Kentucky, constituted a separate appropriate bargaining unit (R. 173–174). This mine was subsequently closed and no election was ever held.

[4] References preceding the semicolon are to the Board's findings; succeeding references are to the supporting evidence.

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173; 115). A great majority of the workers in the three mines live in the town of Earlington (R. 172–173; 114). The three Earlington mines are all under the supervision of the same superintendent and assistant superintendent, while petitioner's other mines near Sturgis each have a separate superintendent (R. 172–173; 116). The three Earlington mines are machine-loading mines while Mine No. 2, which the Board held constituted a separate appropriate bargaining unit, is a hand-loading mine (R. 172; 125).

On January 25, 1944, the Board conducted an election among the employees in the above described unit which the Union won, and on February 11, 1944, the Board certified the Union as the statutory bargaining representative of the employees in said unit (R. 176–178).

After the issuance of the certification, the Union, by letter dated February 14, 1944, requested petitioner to meet with it for the purposes of collective bargaining (R. 179). Petitioner, by letter dated February 18, 1944, declined, claiming that the Board's certification was invalid (R. 180). Thereafter, the Board, upon charges filed by the Union, issued its complaint alleging, insofar as is material here, that petitioner had refused to bargain collectively with the Union, in violation of Section 8 (5) and (1) of the Act, and held a hearing on the issues raised by the complaint on April 17, 1944 (R. 66–67). At the hearing, petitioner sought to adduce evidence relating to the

issue of the appropriate collective bargaining unit which was admittedly available at the time of the prior representation hearing (R. 144–146). The Board, sustaining the trial examiner's action in this regard (R. 49), refused to permit petitioner to adduce such evidence on the ground that the issue of the appropriate unit had been fully investigated and determined in the prior representation proceeding in which petitioner had been given a full opportunity to participate (R. 67, n. 1, 69–70). Upon the record thus made, and after consideration of briefs and oral argument presented by the parties thereto, the Board issued its decision and order, finding, insofar as is material here, that petitioner had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) of the Act, by refusing to bargain collectively with the Union, upon request (R. 66–75). The Board thereupon issued an order requiring petitioner to cease and desist from its unfair labor practices, upon request, to bargain collectively with the Union, and to post appropriate notices (R. 74–75). After appropriate proceedings, the court below, on December 6, 1945, issued its opinion affirming the Board's findings and order, insofar as is material here (R. 324–331), and, on the same day, entered its decree of enforcement in conformity therewith (R. 323).

ARGUMENT

1. Petitioner contends that the seizure of its mines by the Secretary of the Interior under the War Labor Disputes Act rendered the representation proceeding in question one in which the Secretary of the Interior was an indispensable party, and that since the United States is immune to suit without its consent, the Board was required to discontinue the proceeding during the period of government seizure (Pet. 2–3; Br. 5–15). This contention arises in the case only because the petitioner refused to participate in the representation hearing and the Board did not, in the subsequent unfair labor practice proceeding, permit petitioner to relitigate the appropriate unit issue decided in the representation proceeding. At the time the representation proceeding was instituted (R. 15–16), the Secretary of the Interior had not yet seized the mines. Before the Board issued its decision and direction of election, conducted the election and issued the certification (R. 168–178), the Secretary of the Interior had relinquished the mines to petitioner. The Secretary's possession lasted from November 1, 1943, to November 17, 1943, and happened to coincide with the date the Board had theretofore set for the holding of the representation hearing. Any conceivable interest of the Secretary was present only during this short period. Thus there was no lack of all parties in interest at the time the

representation proceeding was begun and at the time it was decided. At most, the question is whether the Board acted properly in proceeding with its hearing during the time the mines were in the possession of the Secretary of the Interior.

Neither the United States nor the Secretary of the Interior was an indispensable party to the hearings conducted by the Board pursuant to Section 9 of the National Labor Relations Act. As this Court has but recently pointed out, the Section 9 investigation is "essentially informal, not adversary." *Inland Empire District Council* v. *Millis,* 325 U. S. 697, 706. Its purpose is merely to determine whether a majority of the employees in an appropriate bargaining unit have selected bargaining representatives. Surely, with reference to such a proceeding, this Court's comment on unfair labor practice proceedings under Section 10 of the Act, that "there is little scope or need for the traditional rules governing the joinder of parties in litigation determining private rights", has even more cogency. *National Licorice Co.* v. *National Labor Relations Board,* 309 U. S. 350, 363.

If, as in the *National Licorice* case, employees, who were parties to contracts with their employers, were not indispensable parties in a proceeding which eventuated in an order to the employer to notify the employees that the contracts violated the Act and that the employees were relieved of all obligations thereunder, it would

seem to follow, *a fortiori,* that the Government was not an indispensable party to the Section 9 hearing here involved. At no stage in this proceeding did the Board contemplate the imposition of a duty to bargain upon the United States. When an order to bargain was finally issued by the Board in the unfair labor practice proceeding, it was directed only against the petitioner and its enforcement was of no concern to the Secretary of the Interior. Section 603.5 of the Regulations issued by the Secretary of the Interior (*infra,* p. 32), provides "that the Government, having temporarily taken possession or custody, will assert only such rights as are necessary to accomplish the national purpose of continued and maximum production." Thus, whatever interest the Secretary might have had at the time of the Section 9 hearing was his to assert, and petitioner could not take it upon itself to impute to the Government an interest which it did not have.

The War Labor Disputes Act does not sustain petitioner's further contention (Br. 11) that the seizure of its mines under that Act renders the "prosecution" of the representation proceeding in question "a violation of the War Labor Disputes Act." Sections 4 and 5 of the War Labor Disputes Act (*infra,* pp. 28–29), upon which petitioner relies in support of its contention, merely provide that after an establishment has been seized pursuant to that Act, changes in wages or other terms or conditions in such establishment

can be made only by order of the National War Labor Board upon application of the government agency operating the establishment or upon the request of "a majority of the employees * * * or their representatives." The very language of this provision suffices to persuade the reader that Congress contemplated the designation of a representative of the majority of the employees, and its legislative history indicates that such designation might be made through the processes provided by the National Labor Relations Act.[5] The executive order issued pursuant to the War Labor Disputes Act, dated November 1, 1943 (R. 92; 8 F. R. 14877), as well as the regulations issued by the Secretary of the Interior under the authority of that order, as contemporaneous constructions of the statute "by those charged with the responsibility of getting its machinery in motion," serve further to buttress this conclusion. Cf. *Norwegian Nitrogen Co.* v. *United States,* 288 U. S. 294, 315.

[5] The Senate Report on S. 796, the bill which, as amended, became the War Labor Disputes Act, declares in its analysis of the bill with respect to the rights of employees and employers that "It takes none of their rights away" (Sen. Rep. No. 147, 78th Cong., 1st Sess., p. 1). The debates in Congress (89 Cong. Rec. 3895, 5730, 5732), as typified by the statement of Congressman Thomason, one of the House conferees, to the effect that, "We have not repealed or altered a single word or line in the National Labor Relations Act" (89 Cong. Rec. 5733), demonstrate that Congress, in enacting the War Labor Disputes Act, was on guard against adopting any provisions which would have the effect of curtailing employees' collective bargaining rights under the National Labor Relations Act.

See Sections 603.5, 603.15, 603.16, 603.17, and 603.23 of the Regulations, *infra,* pp. 32–35. The Secretary of the Interior specifically provided, by regulation, that "The mining companies, their personnel and their property are deemed to remain subject during the period of Government control to * * * proceedings of all Federal and State courts and administrative agencies." Section 603.24 (a) of the Regulations, *infra,* p. 35.

2. The Board, upon careful consideration of the matter, gradually evolved the policy which it applied in the decision now before this Court of not permitting an employer, by submitting evidence which was available at the time of a hearing in a prior representation proceeding, to relitigate the issues therein decided in a subsequent unfair labor practice proceeding involving charges of a refusal to bargain with the certified representative. The policy of imposing limitations upon the right of employers to retry, *de novo,* issues previously decided by the Board in representation proceedings was first inaugurated by the Board in *Matter of Pittsburgh Plate Glass Co.,* 15 N. L. R. B. 515, decided September 19, 1939, in which the Board refused to permit the introduction of evidence in the subsequent unfair labor practice case not shown to be "unavailable at, discovered since, or not introduced in, the representation hearing" (15 N. L. R. B., at 518–519). This Court, when the question of the propriety of the Board's action in this regard was before it in *Pittsburgh Plate*

Glass Co. v. *National Labor Relations Board,* 313 U. S. 146, sustained this limitation, although it pointed out that in that case there was no showing made that the evidence sought to be adduced "was more than cumulative". The Court, however, then went on to say, "Nothing more appearing, a single trial of the issue was enough" (313 U. S. at 161–162).

In *Matter of Pacific Greyhound Lines,* 22 N. L. R. B. 111, decided March 29, 1940, the Board again had occasion to state its views concerning the right of employers to relitigate, in subsequent unfair labor practice proceedings, issues previously determined in prior representation proceedings, as follows (22 N. L. R. B. at 124–125):

> While the determinations, findings, conclusions, and certification of the Board in a representation proceeding are not *res judicata* in a subsequent complaint proceeding before the Board under Section 10 (b) and (c), we think it both the intent of the statute and a sound administrative practice that parties in interest to such representation proceeding cannot try and have heard *de novo* in the subsequent complaint proceeding questions or matters adjudicated in the previous proceeding in the absence of cogent showing of possible error in such prior proceeding. * * *
>
> * * * * * *
>
> We think it equally within the statutory intent and sound administrative practice that parties in interest to a representation

> proceeding cannot in a subsequent complaint proceeding require the Board to withhold presumptive effect from its previous determinations, findings, conclusions, and certification, on the ground that the Board in the representation proceeding failed to consider matters or evidence which the parties there could have presented but which they failed to do without apparent reasonable cause. In the instant case the parties had their opportunity to be heard by the Board with regard to such matters in the Representation Proceedings, and the fact that they did not avail themselves thereof does not entitle them as a matter of right to a second opportunity.

The most recent application of this rule was in *Matter of Swift and Company,* 63 N. L. R. B. 718, in which the Board sustained the action of its trial examiner in refusing to permit the employer to adduce evidence on the issue of the appropriate unit which had been previously decided in a representation proceeding (63 N. L. R. B. at 722–723). Compare *Matter of Norfolk Southern Bus Corp.,* 66 N. L. R. B. 1165, decided March 26, 1946.

The policy adhered to by the Board in this case is a salutary one and the only one administratively workable. The whole purpose of representation proceedings is to facilitate collective bargaining and make possible its early commencement by disposing of certain preliminary ques-

tions—such as the appropriate unit and the majority status of the representative claiming to act as the statutory bargaining representative—questions which might prove a threshold obstacle to the bargaining contemplated by the Act. To permit employers to withhold evidence material to these questions at representation hearings for reasons of their own, and thereafter allow them a second opportunity to adduce such evidence in unfair labor practice proceedings would, in many cases, render the representation proceedings wholly meaningless and would set at naught numerous decisions and directions of elections, elections, and certifications. Obviously the Board should not be required to expend either its energies or its funds upon any such futile proceedings. To be required to do so would be the essence of disorderly administration of the Act.

Moreover, to give employers a second opportunity in unfair labor practice proceedings to present evidence on the appropriate unit issue is to invite them to ignore the representation proceedings altogether and to refuse to bargain in the hope that the Board, in the unfair labor practice proceeding, will, upon the basis of the evidence withheld in the representation proceeding, upset its prior unit determination and dismiss the unfair labor practice charges. Manifestly the Board cannot adopt a procedure which is so squarely opposed to the declared policy of the

Act to encourage the practice and procedure of collective bargaining.

Decisions of the circuit courts of appeals fully sanction the action of the Board in this case in denying petitioner "a second opportunity to prove what it refused to prove at its earlier opportunity" (R. 70). Thus in *National Labor Relations Board* v. *Anwelt Shoe Mfg. Co.*, 93 F. (2d) 367 (C. C. A. 1), the employer declined to adduce evidence in its behalf because of its conviction that the Act was unconstitutional. After the Act was held constitutional by the Supreme Court, the employer sought leave of the circuit court of appeals to adduce such evidence. The court denied the petition, holding that there were no reasonable grounds for the failure to adduce the evidence at the hearing before the Board (93 F. (2d) 372).[6] See also *National Labor Relations Board* v. *Weirton Steel Co.*, 135 F. (2d) 494 (C. C. A. 3); *National Labor Relations Board* v. *Aluminum Products Co.*, 120 F. (2d) 567, 573 (C. C. A. 7); *New Idea, Inc.* v. *National Labor Relations Board*, 117 F. (2d) 517, 525 (C. C. A. 7); *National Labor Relations Board* v. *Algoma Plywood and Veneer Co.*, 121 F. (2d) 602, 604–

[6] In *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 25, and *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 123, the employers declined at the hearings before the Board to adduce evidence in their own behalf. The Supreme Court nevertheless sustained the Board's orders without giving the employers a further opportunity to be heard.

605 (C. C. A. 7); *National Labor Relations Board* v. *Tex-O-Kan Flour Mills Co.*, 122 F. (2d) 433, 442 (C. C. A. 5); cf. *Colorado Radio Corp.* v. *Federal Communications Commission*, 118 F. (2d) 24, 26 (App. D. C.).

A further consideration buttresses the decision of the court below. After the short period of Government possession was terminated, petitioner made no effort to have the Board reopen the representation hearing in order to present the evidence which it refused to adduce because of its contention based on the seizure of its mines. Sections 8 and 9 of Article III of the Board's Rules and Regulations, Series 3, as amended (*infra*, pp. 38–39), provide that the Board, after the hearing in a representation proceeding has been held and the Regional Director has transmitted the record to the Board at Washington, shall "proceed, either forthwith upon the record, or after oral argument or the submission of briefs, *or after further hearing*," to direct a secret ballot of the employees, or to certify the representatives designated, or to make other disposition of the matter. [Italics added.] In view of this provision for further hearing, reasonable diligence on petitioner's part, as the court below in effect held (R. 328), required that it apply to the Board to reopen the hearing after the mines were restored to its possession. Petitioner's failure to request such relief of the Board precludes any

claim of prejudice based upon the Boa
to receive the evidence in question.

3. Petitioner contends (Br. 19–2
Board exceeded its powers in determi
employees in its three Earlington,
mines constituted an appropriate co
gaining unit, urging that only an en
unit could be found to be appropr
purposes of collective bargaining. T
upon which the Board based its appr
finding is set forth in the Statemen
5–6. This evidence showed the geog
aration of petitioner's Earlington
mines from its Sturgis, Kentucky, mi
fied supervision of the three Earli
and the extent of organization of pet
ployees. All of these are pertinent f
issue of the appropriate unit and p
a "rational basis" for the Board's
the employees in petitioner's three
Kentucky, mines constituted an app
gaining unit. *National Labor Relati
Hearst Publications, Inc.*, 322 U. S.
*May Department Stores Company
Labor Relations Board*, No. 39, this
burgh Plate Glass Co. v. *National
tions Board*, 313 U. S. 146, 152–1
Labor Relations Board v. *Botany W*
133 F. (2d) 876, 880–881 (C. C. A.
denied, 319 U. S. 751; *National La*

Board v. *Biles-Coleman Lumber Co.*, 98 F. (2d) 18, 21 (C. C. A. 9).

Petitioner's attack on the Board's unit finding is not based upon any evidence in the record upon which the finding was made by the Board but is predicated solely upon evidence introduced in an entirely separate representation proceeding, Case No. 14–R–988 on the records of the Board, involving the employees of petitioner's Poplar Ridge Mine, a mine not involved in the proceeding now before the Court. This separate proceeding was not initiated until over five months after the Board made the unit determination here in question, and while the record in this proceeding, upon motion of petitioner, was physically incorporated in the record before the court below in a separate volume entitled "Volume II, Case No. 14–R–988," the court, in effect, deferred ruling on the question of the propriety of its consideration of this evidence until final consideration of the cause.[7] The Board renewed its ob-

[7] The procedure by which the record in this separate proceeding was printed as part of the record before the court below may be briefly stated as follows: In its designation of the portions of the transcript to be contained in the printed record, required by the rules of the court below, petitioner designated for printing in the record before the court below the record in Board Case No. 14–R–988. Petitioner also included in its designation an alternative motion for leave to introduce as additional evidence the entire record in Board Case No. 14–R–988. The court below, on motion of petitioner, entered the following order:

"FEBRUARY 8, 1945.

"On motion of respondent, the record in case #14–R–988

jection to the court's consideration of the evidence in the Poplar Ridge Mine proceeding in its reply brief to the court below. In its opinion, the court below fully sustained the objection, overruling petitioner's motion to introduce as additional evidence before the Board the evidence in Case No. 14–R–988 upon the ground that petitioner had shown no adequate reason for failing to adduce the evidence in question at the hearing before the trial examiner in the prior proceedings (R. 329–330). Petitioner does not assign as error the action of the court in this regard and consequently, since the statute requires, as this Court has repeatedly held, that "the case must be heard on

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will be included as a part of the record in this case, subject however to objections, if any thereto, made by petitioner at the hearing."

The Board, in certifying the record in this separate proceeding to the court below recited the fact that the certification was being made solely pursuant to the order of the court, and that the Board was not thereby waiving its objection that the evidence in Case No. 14–R–988 was not properly before the court in that proceeding (R. 181–182). Thereafter, the court below, upon motion of the Board, entered the following further order:

"APRIL 6, 1945.

"The motion of the National Labor Relations Board with respect to the printing in a separate volume of the partial record 'In the Matter of West Kentucky Coal Company and United Mine Workers of America, District No. 23, Case No. 14–R–988,' is granted; but its motion with respect to reimbursement of the costs of printing such record in the event that the objection of the National Labor Relations Board to the consideration of the aforesaid partial record as a part of the record in this cause, is denied, as premature."

the record as certified by the Board,"[8] there is no question before this Court concerning the propriety of the Board's unit determination herein in the light of the evidence in Case No. 14–R–988, which is the only evidence upon which petitioner relies. The only question before the Court in this regard is whether there is a "rational basis" for the Board's unit determination herein upon the evidence upon which it was made, and this question, as has been shown at pp. 18–19, *supra,* can only be answered in the affirmative.

CONCLUSION

The decision of the court below is correct and there is no conflict of decisions. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

DAVID A. MORSE,
General Counsel.

RUTH WEYAND,
OWSLEY VOSE,
Attorneys, National Labor Relations Board.

MAY 1946.

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[8] *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 249–250; *American Federation of Labor* v. *National Labor Relations Board*, 308 U. S. 401, 405–406; *National Labor Relations Board* v. *Foote Bros. Gear and Machine Corp.*, 311 U. S. 620.

APPENDIX A

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151, *et seq.*) are as follows:

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such a unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (e) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be

reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. * * *

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(e) The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order * * * and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power * * * to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, mod-

ifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

APPENDIX B

The relevant provisions of the War Labor Disputes Act (Act of June 25, 1943, c. 144, 57 Stat. 163, 50 U. S. C. App. (Supp. IV) 1501, *et seq.*) are as follows:

* * * * *

SEC. 3. Section 9 of the Selective Training and Service Act of 1940 is hereby amended by adding at the end thereof the following new paragraph:

"The power of the President under the foregoing provisions of this section to take immediate possession of any plant upon a failure to comply with any such provisions, and the authority granted by this section for the use and operation by the United States or in its interests of any plant of which possession is so taken, shall also apply as hereinafter provided to any plant, mine, or facility equipped for the manufacture, production, or mining of any articles or materials which may be required for the war effort or which may be useful in connection therewith. Such power and authority may be exercised by the President through such department or agency of the Government as he may designate, and may be exercised with respect to any such plant, mine, or facility whenever the President finds, after investigation, and proclaims that there is an interruption of the operation of such plant, mine, or facility as a result of a strike or other labor disturbance, that the war effort will be unduly impeded or delayed by such interruption,